

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.E.A. No. 66 of 2006

DATE OF DECISION: 11.9.2007

Commissioner of Central Excise Commissionerate, Jalandhar

...Appellant

Versus

M/s Dhillon Kool Drinks Beverages Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Kamal Sehgal, Advocate,
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

This appeal filed by the appellant-revenue under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), challenges order dated 19.4.2005, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'). It has been claimed that the following questions of law would arise for determination of this Court:-

- i. Whether penalty leviable under Rule 25 of Central Excise Rules, 2002 and interest leviable under Section 11AB of the Act can be waived only on the sole ground that duty stand deposited prior to issuance of show cause notice?

- ii. Whether *mens rea* is essential for invoking penal provisions in terms of Rule 25 of the Central Excise Rules, 2002?

After hearing learned counsel for the appellant and perusing the record we find that the matter is not *res integra*, inasmuch as, we have already decided similar appeals against the revenue and in favour of the assessee in the cases of **Commissioner of Central Excise, Ludhiana v. M/s Omkar Steel Tubes (P) Ltd.** (C.E.A. No. 5 of 2007, decided on 28.8.2007); **Commissioner of Central Excise, Ludhiana v. M/s Crop Chemical India Ltd. and another** (C.E.A. No. 6 of 2007, decided on 31.8.2007); **Commissioner of Central Excise, Delhi-III v. M/s Sun Vacuum Former Pvt. Ltd.** (C.E.A. No. 56 of 2007, decided on 7.9.2007); and **Commissioner of Central Excise, Chandigarh v. M/s Diamond Steel Rolling Mills and another** (C.E.A. No. 25 of 2007, decided on 7.9.2007).

In view of the above, instant appeal fails and the same is dismissed in terms of the aforementioned judgments.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 11, 2007
Pkapoor